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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE, Plaintiff and Respondent, v. LEONARD E. MARQUEZ, Defendant and Appellant.	C078206 (Super. Ct. No. 13F03769)

A jury found defendant Leonard E. Marquez guilty of nine crimes against two minor victims (13-year-old B. and 16-year-old M.) having to do with his initiating and engaging in sexual contact with both of them individually. The court sentenced him to 11 years and eight months in prison.

On appeal, defendant raises the following three contentions: (1) this court should review M.'s sealed records to determine if they contain discoverable evidence; (2) his punishment for luring a minor should be stayed; and (3) the no-visitation order should be modified. We have: (1) reviewed the sealed records and have found no abuse of

discretion by the trial court; (2) agree that defendant's punishment for luring a minor should be stayed; and (3) agree the no-visitation order should be modified. We modify the judgment and affirm as modified.

FACTUAL AND PROCEDURAL BACKGROUND

In the beginning of May 2013, B. was a 13-year-old eighth grader when she met the 22-year-old defendant at American River College, where she was with her mom, who was signing up for classes. B. was by the cafeteria and defendant came up to her and started talking with her, culminating in them exchanging phone numbers. Defendant came to B.'s house, but B.'s mother told defendant to leave her daughter alone because she was only 13. Defendant persisted in contacting B., receiving nude pictures he solicited of her over his smart phone and having vaginal intercourse with her at a nearby park.

In the middle of May 2013, M. was a 16-year-old employee at El Pollo Loco in Rancho Cordova when she met defendant, who was a customer. Defendant handed her a note with his name and phone number and wrote that she was beautiful. Later that night, they exchanged texts in which M. wrote she was 16 and he wrote he was 22. Over the next few days, the two met up a number of times and had vaginal intercourse three times.

DISCUSSION

I

The Trial Court Acted Within Its Discretion In Not Disclosing The Victims' Sealed Records

In the trial court, defendant filed a motion seeking discovery of the victims' sealed juvenile records for impeachment evidence. The trial court conducted an in camera review of the records and found nothing discoverable.

On appeal, defendant asks us to review M.'s records in camera to determine whether the trial court was correct. The procedure a trial court follows is this: the

custodian of the records forwards the records to the trial court; the trial court will review them in camera, balance the defendant's right of confrontation against the subject of the record's right of privacy, and determine which records, if any, are essential to the defendant's right of confrontation. (*Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, 1295-1296.) If the trial court determines after an in camera hearing that no records may be disclosed, a defendant is not entitled to view the documents to show the court abused its discretion. Instead, the reviewing court looks at the same evidence to determine whether the trial court abused its discretion. (See *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 59-60 [94 L.Ed.2d 40, 60-61] [defendant's right to fair trial when seeking disclosure of confidential records is adequately protected by an in camera review of the records].)

We have reviewed the sealed records and conclude the trial court did not abuse its discretion. None of the records implicate defendant's right of confrontation.

II

The Trial Court Must Stay The Punishment

For Luring A Minor (B.) In Count Three

Defendant contends (and the People agree) that his four-month prison sentence for luring B. in count three must be stayed under Penal Code[1] section 654. They are correct, because defendant lured B. to commit a lewd act with her (count four), and he was already punished for count four with the upper term of eight years. Section 654 prohibits punishment for luring when defendant is also punished for the crime for which defendant lured the minor, because the crimes were based on a single intent and objective. (See *People v. Medelez* (2016) 2 Cal.App.5th 659, 663-664 [a defendant could not be punished

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1 All further section references are to the Penal Code.

for attempted oral copulation and luring because the crimes were based on a single intent and objective].)

III

The Court's No-Visitation Order And The Abstract Of Judgment Must Be Corrected To Show A No-Visitation Order For Victim B. Only

The court imposed the following no-visitation order at sentencing: "You are not to have visitation privileges with any of the victims in this case pursuant to section 1202.5 of the Penal Code." The abstract of judgment reflects this on item 13 as: "No. Visit. Privileges w/victim."

Defendant contends the no-visitation order must be modified to apply only to B., because the only crime that qualified for a no-contact order was against B. He is correct. Section 1202.05, subdivision (a) requires the court to "prohibit all visitation between the defendant and the child victim" if the defendant is convicted of certain enumerated crimes against the child victim. One of the crimes against B. (a lewd act upon a minor under 14) is enumerated in section 1202.05, subdivision (a), but none of the crimes against M. are so enumerated. Thus, we modify the no-visitation order to apply only to B. and order the abstract of judgment modified accordingly.

DISPOSITION

The judgment is modified to: (1) stay the four-month punishment on count three, luring a minor; and (2) prohibit visitation between defendant and victim B. only. As modified the judgment is affirmed.

The trial court clerk is directed to modify the abstract of judgment as follows: (1) as to count "3," put an "X" in the box marked "654 STAY," and correspondingly reduce the total sentence at the bottom of that grid to reflect a sentence of "2 | 0" (instead of "2 | 4"); and (2) change the no visitation order in item 13 to state, "No Visit.

Privileges w/victim B." The trial court clerk is further directed to transmit a copy of the modified abstract of judgment to the Department of Corrections and Rehabilitation.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Nicholson, J.